

fewer available voice channels for cellular customers; and (6) the reseller switch must be capable of protecting against fraud.⁵⁴

Not surprisingly, CMRS resellers opposed the Commission's tentative conclusion and urged the FCC to allow direct reseller switch interconnection.⁵⁵ The resellers re-hash the very same arguments the Commission rejected in adopting its tentative conclusion in the *Second NPRM*. They argue, first, that cellular services alone, rather than all switched mobile voice providers constitute the relevant product market for purposes of evaluating the reseller switch proposal. They claim that resale obligations and direct interconnection are necessary because the cellular marketplace is not competitive and switch-based resale is the best near-term hope for actual competition.⁵⁶

Contrary to the assertions of the resellers, the CMRS marketplace does not suffer from the lack of competition. As GTE stated in its comments, the performance of the current cellular marketplace has been consistent with what would be expected in a competitive market.⁵⁷

⁵⁴ AT&T Comments at 29-30, and Appendix 2, Declaration of Roderick Nelson, at 2-4. See also CTIA Comments at 37-39; Nextel Comments at 16; Sprint Comments at 12; Vanguard Comments at 14.

⁵⁵ See Cellular Service, Inc. and Comtech Mobile Telephone Company ("CSI/Comtech") Comments; Connecticut Telephone and Communication System, Inc. ("Connecticut Telephone") Comments at 3-10; National Wireless Resellers Association ("NWRA") Comments at 2-15; Telecommunications Resellers Association ("TRA") Comments; Time Warner Telecommunications ("Time Warner") Comments at 4-13.

⁵⁶ Time Warner Comments at 10-14; TRA Comments at 17-22.

⁵⁷ GTE Comments at 6, citing *Besen Paper* at 5-9.

Moreover, as the Commission affirmed in its tentative conclusion regarding the relevant product market, the effect of the imminent competitors to cellular service providers in each geographic area must be considered in analyzing the merits of the reseller switch proposal.⁵⁸ The advent of PCS and enhanced SMR offerings will further increase competition in the mobile services marketplace. Indeed, recently, in denying a petition by the California Public Service Commission to retain regulatory authority over intrastate cellular rates, the Commission stated that any competitive analysis of the cellular industry must “consider the immediate and near term impact of PCS.”⁵⁹ Noting lower prices and improved technology in the cellular market, the Commission remarked that “the advent of PCS appears unambiguously to be having an impact on the present marketplace. . . .”⁶⁰

Unbundling network components and allowing direct interconnection with the network are extremely burdensome requirements. In competitive markets, these requirements can impede incentives to invest resources in developing new technologies and services. For this reason, the Commission has only mandated unbundling and direct interconnection in markets where it believed that these requirements were necessary to allow competitors or other entrepreneurs access to essential bottleneck facilities. Thus, in the *Computer III* proceeding,

⁵⁸ *Second NPRM* at 47-48.

⁵⁹ *California Preemption Order* at 17 (para. 31).

⁶⁰ *Id.* at 19 (para. 33).

the Commission required the Bell Operating Companies ("BOCs") to unbundle their networks in order to facilitate access to BOC facilities by information service providers.⁶¹ Also, in the *Expanded Interconnection* proceeding, the Commission required LECs to offer direct interconnection to competitive access providers ("CAPs") and other entities in order to promote competition for traditional local exchange monopoly services.⁶² In both cases, the driving force behind the Commission's decision was the need to promote competitive access

⁶¹ Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof, Communications Protocols Under Section 64.702 of the Commission's Rules and Regulations, *Notice of Proposed Rulemaking*, CC Docket No. 85-229, FCC 85-397, 50 Fed. Reg. 33581 (Aug. 20, 1985) ("*Computer III NPRM*"), *Report and Order* (Phase I), 104 FCC 2d 958 (1986) ("*Phase I Order*"), *recon.*, 2 FCC Rcd 3035 (1987) ("*Phase I Reconsideration Order*"), *further recon.*, 3 FCC Rcd 1135 (1988) ("*Phase I Further Reconsideration Order*"), *second further recon.*, 4 FCC Rcd 5927 (1989) ("*Phase I Second Further Reconsideration, Phase I Order and Phase I Reconsideration Order*") *vacated*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); Phase II, 2 FCC Rcd 3072 (1987) ("*Phase II Order*"), *recon.*, 3 FCC Rcd 1150 (1988) ("*Phase II Reconsideration Order*"), *further recon.*, 4 FCC Rcd 5927 (1988) ("*Phase II Further Reconsideration Order*"), *Phase II Order vacated*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceedings, 5 FCC Rcd 7719 (1990) ("*ONA Remand Order*"), *recon.*, 7 FCC Rcd 909 (1992), *petitions for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) ("*BOC Safeguards Order*"), *aff'd in part and remanded in part*, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) ("*California III*").

⁶² Expanded Interconnection with Local Telephone Company Facilities, *Report and Order and Notice of Proposed Rulemaking*, CC Docket No. 91-141, 7 FCC Rcd 7369 (1992) ("*Special Access Interconnection Order*"), *recon.*, 8 FCC Rcd 127 (1992), *further recon.*, 8 FCC Rcd 7341 (1993), *vacated in part and remanded sub nom.*, *Bell Atlantic Telephone Cos. v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994); Expanded Interconnection with Local Telephone Company Facilities, *Second Report and Order and Third Notice of Proposed Rulemaking*, 8 FCC Rcd 7374 (1993) ("*Switched Transport Expanded Interconnection Order*"), *pet. for review pending sub nom.* *Bell Atlantic v. FCC*, No. 93-1743 (D.C. Cir., filed Nov. 12, 1993); Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II, *Third Report and Order*, 9 FCC Rcd 2718 (1994) ("*Tandem Signaling Interconnection Order*"); Expanded Interconnection with Local Telephone Company Facilities, *Memorandum Opinion and Order*, FCC 94-190, 9 FCC Rcd 5154 (1994) ("*Virtual Collocation Order*"), *appeal docketed sub nom.*, *Southwestern Bell Telephone Co. v. FCC*, No. 94-1547 (D.C. Cir. Aug. 10, 1994).

to essential facilities controlled by the LECs.⁶³ Given the competitive nature of the relevant product market, the Commission was correct in proposing not to order reseller switch interconnection in this proceeding.

The resellers also contend that reseller switch interconnection is required under sections 332(c)(1)(B) and 201 of the Communications Act ("the Act").⁶⁴ As the NWRA notes, section 332(c)(1)(B) does not alter the requirements of section 201 of the Act. The NWRA also notes that section 201 of the Act only requires common carriers to provide interconnection to other common carriers upon reasonable request and where the Commission finds "*that the requested interconnection is in the public interest.*"⁶⁵ As discussed above, and in great detail in the vast majority of comments addressing this issue, reseller switch interconnection would impose an enormous burden on a growing, competitive industry, without producing significant benefits either in the form of customer services or in the form of improving competition. Accordingly, the Commission tentatively concluded in the *Second NPRM* that the costs of implementing switch-based resale outweigh any public benefit.⁶⁶

⁶³ See, e.g., *Computer III Phase I Order*, 104 FCC 2d at 967-970 (discussing the need to ensure that BOC's cannot use their control over monopoly basic services to discriminate against others' competitive services and products); *Virtual Collocation Order*, 9 FCC Rcd at 5155 (discussing the Commission's desire to facilitate competitive provision of traditional monopoly access services).

⁶⁴ 47 U.S.C. §§ 332(c)(1)(B), 201.

⁶⁵ NWRA Comments at 2 (emphasis added).

⁶⁶ *Second NRPM* at 48.

F. The Commission Should Preempt State Regulatory Authority to Mandate CMRS Interconnection, Including Interconnection of Reseller Switches

In its initial comments, GTE argued that preemption of state-imposed interconnection requirements is essential to prevent state regulation from undermining federal policy and is consistent with past FCC decisions.⁶⁷ In addition, GTE argued that the Commission should explicitly preempt states from mandating direct interconnection with reseller switches. GTE stated that state interconnection requirements should be preempted because they would thwart the FCC's proposed policy regarding reseller switches and because direct interconnection of reseller switches is inextricably intertwined with rates issues.⁶⁸

Several other parties responded to the Commission's inquiry regarding preemption of state interconnection requirements.⁶⁹ These parties unanimously support FCC preemption of state interconnection requirements. AT&T also joined GTE in arguing that Commission preemption should include reseller switch interconnection requirements as well.⁷⁰ Like GTE, these parties argue that preemption is consistent with past FCC decisions and that state interconnection requirements would negate FCC policy in favor of a marketplace

⁶⁷ GTE Comments at 11-12.

⁶⁸ *Id.* at 25-26.

⁶⁹ AT&T Comments at 20-23; Bell Atlantic Comments at 6-7; BellSouth Comments at 4-5; CTIA Comments at 16-19; SNET Cellular, Inc. ("SNET") Comments at 11-13; Vanguard Comments at 6-7.

⁷⁰ AT&T Comments at 20.

solution. In addition, these parties argue that different state interconnection requirements would impose additional costs on CMRS providers.⁷¹

Based on these comments, the Commission should make clear that state regulation of CMRS interconnection is preempted. The Commission should also make clear that its preemption policy precludes state-mandated reseller switch interconnection.

⁷¹

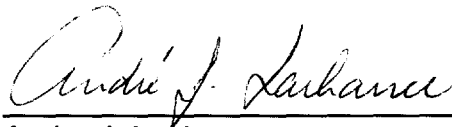
See Id.

II. CONCLUSION

GTE opposes comments that argue for regulation rather than market forces to govern interconnection and roaming arrangements among CMRS providers. GTE opposes Ameritech's comment that a resale exception is not warranted for air-ground service, and asks the Commission to declare that its resale policy does not require carriers to provide access to proprietary technologies and products. GTE also argues that the Commission should specifically recognize that facilities-based (licensee) resellers are not similarly situated with other resellers. Finally, GTE continues to oppose proponents of the reseller switch proposal, but supports those in favor of FCC preemption of any state-mandated CMRS interconnection requirements.

Respectfully submitted,

GTE Service Corporation and its telephone
and wireless companies

A handwritten signature in cursive script, reading "Andre J. Lachance", written over a horizontal line.

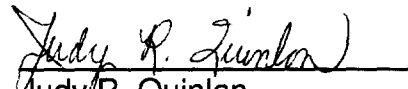
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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 14th day of July, 1995 to all parties of record.


Judy R. Quinlan